IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 140 of 1993

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

UNION OF INDIA

Versus

STATE OF GUJARAT

Appearance:

MR AKSHAY H MEHTA for Petitioner

MR ST MEHTA APP for Respondent No. 1

MR RS DINKAR for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 03/10/2000

ORAL JUDGEMENT

This Revision application under section 397 read with section 401 CRPC arises of the judgment and order dated 15th February, 1993, passed by the learned Chief Judicial Magistrate, Bhuj-Kutch, below application Ex.

92 in Criminal Case No. 735/91.

It appears that pursuant to the complaint filed by the Customs Superintendent, Bhuj, the above referred Criminal Case No. 735/91, is registered against some 14 persons for the offence punishable under the Customs Act. Pending the trial, the accused no. 14 Sajjad Ali Haji Mehabullah Shaikh @ Sajjad Seth, made an application Ex. 92, and prayed that the statement of the accused no. 1 Noor Mohamed Ismail Punjabi recorded by the Customs Superintendent, Bhuj, on 19th November, 1990, be ordered to be produced in the trial in exercise of the power of the learned Magistrate under section 91 CRPC. The application was contested by the complainant. By order dated 15th February, 1993, the learned Magistrate allowed the application and directed the Customs Superintendent to produce the statement of the accused no. 1 Noor Mohamed Ismail Punjabi recorded by him on 19th November, 1990. Feeling aggrieved, the complainant has preferred the present Revision.

It appears that the disputed statement of the accused no. 1 Noor Mohamed Ismail Punjabi was recorded by the Customs Superintendent on 19th November, 1990 under section 108 of the Customs Act. So far as admissibility of such statement is concerned, it is not disputed that the said statement is admissible in evidence unlike a statement made before the police under section 162 CRPC. Mr. Mehta has however submitted that the said statement may not have any evidentiary value as against the co-accused. Be that as it may, admissibility of a document is not the same as its probative value . It is for the learned trial Judge to consider and determine the probative value of such statement. However, it is within the jurisdiction of the learned Magistrate to call for such document to be produced on the records of the matter. I see no substance in the objection of the complainant against production the said statement before the court.

The Revision Application is, therefore, dismissed. The order dated 15th February, 1993, made by the learned Chief Judicial Magistrate, Bhuj-Kutch, below application Ex. 92 in Criminal Case No. 935/91 is confirmed. Interim relief is vacated. Rule is discharged.

(MS R.M.DOSHIT J)

JOSHI